

1 DOUGLAS A. WINTHROP (SBN 183532)  
2 Douglas.Winthrop@arnoldporter.com  
3 JEREMY T. KAMRAS (SBN 237377)  
4 Jeremy.Kamras@arnoldporter.com  
5 JOSEPH FARRIS (SBN 263405)  
6 Joseph.Farris@arnoldporter.com  
7 **ARNOLD & PORTER KAYE SCHOLER LLP**  
8 Three Embarcadero Center, 10th Floor  
9 San Francisco, CA 94111-4024  
10 Telephone: 415.471.3100  
Facsimile: 415.471.3400

7 *Attorneys for Defendants*

8 XINGKE ELECTRONICS (DONGGUAN) CO.,  
9 LTD., formerly known as SINCO  
10 ELECTRONICS (DONGGUAN) CO., LTD.,  
LIEW YEW SOON aka, MARK LIEW, NG  
CHER YONG. aka CY NG, and MUI LIANG  
TJOA aka ML TJOA

**WHGC, P.L.C.**  
Jeffrey C.P. Wang (SBN 144414)  
*JeffreyWang@WHGCLaw.com*  
Michael G. York (SBN 89945)  
*MichaelYork@WHGCLaw.com*  
Kathleen E. Alparce (SBN 230935)  
*KathleenAlparce@WHGCLaw.com*  
Jessica A. Crabbe (SBN. 263668)  
*JessicaCrabbe@WHGCLaw.com*  
1301 Dove Street, Suite 1050  
Newport Beach, CA 92660  
Tel. (949) 833-8483; Fax: (866) 881-5007

11  
12 **UNITED STATES DISTRICT COURT**  
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
14 **SAN FRANCISCO DIVISION**

16 SINCO TECHNOLOGIES PTE LTD.,

Case No. 3:17-CV-05517-EMC

17 Plaintiff,

Action Filed: September 22, 2017

18 vs.  
19 SINCO ELECTRONICS (DONGGUAN) CO.,  
LTD.; XINGKE ELECTRONICS  
20 (DONGGUAN) CO., LTD.; XINGKE  
ELECTRONICS TECHNOLOGY CO., LTD.;  
21 SINCOO ELECTRONICS TECHNOLOGY  
CO., LTD.; MUI LIANG TJOA (an  
individual); NG CHER YONG aka CY NG (an  
individual); and LIEW YEW SOON aka  
22 MARK LIEW (an individual),

**MOTION IN LIMINE NO. 4 TO EXCLUDE  
REFERENCE TO PRELIMINARY  
INJUNCTIONS AND CONTEMPT**

**Judge:** Honorable Edward M. Chen

**Trial:** November 1, 2021

24 Defendants.

1 **I. SUMMARY OF MOTION IN LIMINE NO. 4**

2 Defendants hereby file Motion in Limine No. 4 seeking an order excluding Plaintiff SinCo  
 3 Technologies Pte. Ltd. (“SinCo SG”) from **referencing or offering any evidence concerning: (1)**  
 4 **the preliminary injunction orders (“PIs”) issued by the Superior Court of California, Santa**  
 5 **Clara County on June 1, 2017, and this Court on October 30, 2018 (ECF 86); and (2)**  
 6 **Defendant Mark Liew’s stipulation to a violation of the state court’s PI that resulted in the**  
 7 **“Order of Contempt Re Contempt of Defendant Mark Liew.** See Farris Decl. Ex. A,  
 8 (“Contempt Order”). This evidence is not relevant to the merits of the claims that will be tried in  
 9 this case (FRE 401) and, were there any probative value from this evidence, it is substantially  
 10 outweighed by a danger of unfair prejudice, confusion of the issues, and the potential to mislead the  
 11 jury. The danger is not only to Defendant Liew, but also to the remaining Defendants who were  
 12 never found to have violated either PI (FRE 403).

13 **II. BACKGROUND**

14 The June 2017 preliminary injunction against Liew in the State Action, in part, prohibited  
 15 Liew from contacting SinCo SG customers and portraying himself as a SinCo SG employee. Farris  
 16 Decl. Ex. B, (“State PI”). The preliminary injunction against Liew in this action, issued on October  
 17 2018, and well after Defendants had ceased use their former corporate name that used the term  
 18 “SinCo,” prohibited Defendants from using the term “SinCo” to identify themselves or their  
 19 products or services, while permitting them to use the word “XingKe,” so long as they included a  
 20 disclaimer in their communications with customers. Farris Decl. Ex. C, (“Federal PI”).

21 During the discovery process, Liew produced certain emails with Google for a period  
 22 covered by the State PI. Farris Decl. Ex. D.<sup>1</sup> All but one of these emails revealed that, in a few  
 23 instances after June 2017, Liew *responded to* emails sent to his former “sincocn.cn” email address  
 24 by Google.<sup>2</sup> Farris Decl. Ex. D. In response to this evidence, Plaintiff brought a contempt

25  
 26 <sup>1</sup> For example, Liew responded to e-mails sent from Google to him on June 2, 2017 (Exhibit D-1),  
 27 June 9, 2017 (Exhibit D-2), June 15, 2017 (Exhibit D-4), June 20, 2017 (Exhibit D-6), July 5, 2017  
 (Exhibit D-7), and August 2, 2017 (Exhibits D-8 and D-9). On June 10, Liew sent a follow-up e-  
 mail (Exhibit D-3) regarding a discussion that was initiated by Google on June 9 (Exhibit D-2).

28 <sup>2</sup> On June 19, Liew sent an e-mail to Google discussing a project that was already underway.  
 (Exhibit D-5).

1 proceeding against Liew for violating the State PI. The state court recognized that holding a  
 2 contempt proceeding would require up to five days of testimony and likely result in both sides  
 3 submitting briefs on both factual and legal issues. Farris Decl. Ex. A, at 5. To avoid “the  
 4 substantial costs both sides would incur” in litigating the contempt proceeding, the court proposed  
 5 that the parties enter into a stipulation to bring the contempt hearing to a resolution. *Id.* The parties  
 6 agreed, and the court issued an order, fining Liew \$1,000 for this violation of the State PI. *Id.*

7 At trial, whether Google chose Xingke over SinCo SG due to confusion will be a crucial  
 8 factual issue for the jury to decide—but one thing will be clear: Google knew that the difference  
 9 between the companies *long before* these emails were sent in 2017. Rather, the evidence will show  
 10 that—a year before Liew emailed with Google—Google had entered into a Master Purchase  
 11 Agreement with Liew’s employer, SinCo DG Dongguan (now Xingke) on October 20, 2016. Farris  
 12 Decl. Ex. E, (“SinCo DG Master Purchase Agreement”). Moreover, Google’s Global Supply  
 13 Manager, Andy Lim, knew that Xingke and SG were two distinct entities as early as August 2016.  
 14 Lim’s email with Defendant ML Tjoa reveals that Lim desired “to treat [SinCo SG and Xingke] as  
 15 separate companies” and was fully aware that XingKe (then known as SinCo Electronics  
 16 Dongguan) was competing with SinCo SG as a separate company at that time. Farris Decl. Ex. F.

### 17 **III. ARGUMENT.**

#### 18 **A. The Court should exclude evidence relating to the State and Federal** 19 **Preliminary Injunctions under FRE 401, 403, and 404.**

20 Courts regularly preclude the admission of preliminary injunction evidence, or any reference  
 21 to such proceedings, due to the inevitable risk of undue influence on a jury. *See Newmark Realty*  
*22 Capital, Inc. v. BGC Partners, Inc.*, No. 16-cv-01702-BLF, 2018 WL 6439133, at \*6 (N.D. Cal.  
 23 Dec. 7, 2018); *Park W. Radiology v. CareCore Nat. LLC*, 675 F. Supp. 2d 314, 323-24 (S.D.N.Y.  
 24 2009); *see also King Lombardi Acquisitions, Inc. v. Troop Real Estate, Inc.*, No. 09-cv-3672-DSF,  
 25 2011 WL 13213918, at \*1 (C.D. Cal. Jan. 10, 2011) (excluding evidence of a stipulated preliminary  
 26 injunction). *Newmark Realty Capital, Inc.*, 2018 WL 6439133, at \*6 (N.D. Cal. Dec. 7, 2018), also  
 27 a trademark case, is instructive. There, the court excluded evidence under Rule 403 of any  
 28 reference to the court’s prior preliminary injunction order. It reasoned that “the jury is likely to

1 determine that the judge has already decided the factual issues and thus the jury need not re-weigh  
 2 the evidence.” *Id.* It also concluded that a limiting instruction would be insufficient to mitigate the  
 3 prejudicial effect of the evidence, “[g]iven the complexity of the issues and the unavoidable  
 4 deference a jury is likely to give a judge’s written order.” *Id.* Likewise, in *Park*, the court excluded  
 5 evidence under Rule 403 of both the preliminary injunction ruling as well as any reference to the  
 6 making of the motion due to the risk of unduly influencing the jury. *Park W. Radiology*, 675 F.  
 7 Supp. 2d at 323-24.

8 The same result is required here. Any mention of the multiple preliminary injunctions  
 9 barring Liew and the other Defendants, respectively, from using the terms “SinCo” to identify  
 10 themselves or their products likely would cause the jury to determine that both courts have already  
 11 decided that such use was unlawful or likely to cause SinCo SG actual harm. In fact, this case  
 12 presents an even greater risk of unfair prejudice than the typical case because there were multiple  
 13 PIs in place, and as stated above, whether Google was a legitimate customer of Liew’s employer  
 14 remains an issue for the jury to decide—and there is strong evidence showing that his stipulated  
 15 violation of the PI with respect to that conduct was irrelevant to any confusion.

16 Moreover, allowing any evidence regarding Liew’s violation of the preliminary injunction  
 17 will substantially prejudice the jury against the other Defendants who did not stipulate to having  
 18 violated the state PI. There is a substantial risk that the jury will attribute the fact that Liew  
 19 stipulated to having violated the state PI to all Defendants—his colleague and employer—thereby  
 20 causing further prejudice by mere association. Given the dramatic narrative that Plaintiff hopes to  
 21 convey at trial, including focusing primarily on Liew’s allegedly “secret” visits to customers in July  
 22 2016, a contempt finding arising from Liew’s emails with Google will cause unfair prejudice to  
 23 Defendants where they might not otherwise even perceive that the evidence has any evidentiary  
 24 value. The threshold question of whether Google was actually confused at any point when it  
 25 awarded various projects to SinCo Electronics (Dongguan) has yet to be decided. Therefore,  
 26 evidence relating or referring to either the state or federal PIs, as well as Liew’s violation of the  
 27 state PI, should be excluded under Rules 402, 403, and 404.

28

1           **B.     This Court should exclude evidence of Liew's stipulation to the Contempt**  
 2           **Order.**

3           In the alternative, at least Liew's stipulation to the Contempt Order should be excluded  
 4           under Federal Rule of Evidence 408. The rule proscribes, to prove or disprove validity, the  
 5           admission of furnishing, promising, or offering valuable consideration to compromise a claim.  
 6           Here, the state court recognized that holding a contempt proceeding would require significant  
 7           testimony and cross-examination and likely result in both sides incurring substantial legal fees. To  
 8           avoid significant litigation fees, the court encouraged the parties to bring the contempt hearing to a  
 9           resolution. In other words, Plaintiff avoided incurring up to five days of attorneys' fees and  
 10           additional costs associated with the submission of a written brief because Liew agreed to accept an  
 11           entry of the contempt order to forego his right to present evidence and cross-examine witnesses at  
 12           the contempt hearing. Liew's good faith decision to accept a compromise is the exact conduct that  
 13           Rule 408 was meant to encourage. Now, Plaintiff seeks to use such evidence as a sword as  
 14           circumstantial evidence of Liew's liability that would create undue degree of prejudice.

15           **IV.    CONCLUSION.**

16           For the foregoing reasons, the Motion In Limine to Exclude Evidence of the State Court  
 17           Preliminary Injunction, Liew's Stipulation of the Related Contempt Order, and Liew's Violation  
 18           of the State Court Preliminary Injunction should be granted as set forth in the Proposed Order.

19           Dated: September 3, 2021.

ARNOLD & PORTER KAYE SCHOLER LLP

20           By: /s/ Douglas A. Winthrop  
 21           Douglas A. Winthrop

22           *Attorneys for Defendants XINGKE*  
 23           ELECTRONICS (DONGGUAN) CO., LTD.,  
 24           formerly known as SINCO ELECTRONICS  
 25           (DONGGUAN) CO., LTD., LIEW YEW SOON  
 26           aka, MARK LIEW, NG CHER YONG. aka CY  
 27           NG, and MUI LIANG TJOA aka ML TJOA

1 LAEL D. ANDARA (SBN 215416)  
 2 DANIEL E. GAITAN (SBN 326413)  
 3 ROBIN M. PEARSON (SBN 146704)  
 4 ROPERS MAJESKI PC  
 5 545 Middlefield Road, Suite 175  
 6 Menlo Park, CA 94025  
 Telephone: 650.364.8200  
 Facsimile: 650.780.1701  
 Email: lael.andara@ropers.com  
 robin.pearson@ropers.com  
 daniel.gaitan@ropers.com

7 Attorneys for Plaintiff  
 8 SINCO TECHNOLOGIES PTE LTD

9  
 10 UNITED STATES DISTRICT COURT  
 11  
 12 NORTHERN DISTRICT OF CALIFORNIA

13 SINCO TECHNOLOGIES PTE LTD,

14 Plaintiff,

15 v.

16 SINCO ELECTRONICS (DONGGUAN) CO.,  
 LTD.; XINGLE ELECTRONICS  
 (DONGGUAN) CO., LTD.; XINGKE  
 ELECTRONICS TECHNOLOGY CO., LTD.;  
 17 SINCOO ELECTRONICS TECHNOLOGY  
 CO., LTD.; MUI LIANG TJOA (an  
 individual); NG CHER YONG aka CY NG (an  
 individual); and LIEW YEW SOON aka  
 18 MARK LIEW (an individual),

19 Defendants.

20 Case No. 3:17CV5517

21  
 22  
 23  
 24  
 25  
 26  
 27  
 28  
**PLAINTIFF SINCO TECHNOLOGIES  
 PTE LTD'S OPPOSITION TO  
 DEFENDANTS' MOTION IN LIMINE  
 NO. 4 TO EXCLUDE REFERENCE TO  
 PRELIMINARY INJUNCTIONS AND  
 CONTEMPT**

**PRETRIAL HEARING**

Date: October 5, 2021  
 Time: 3:00 p.m.  
 Place: Courtroom 5 – 17<sup>th</sup> Floor  
 Hon. Edward M. Chen

**TRIAL DATE**  
 November 1, 2021

## **MEMORANDUM OF POINTS AND AUTHORITIES**

## INTRODUCTION

3

3 Defendants' Motion *in Limine* No. 4 should be denied as the documents sought to be  
4 excluded are relevant related to Defendants actions as to the trademark and unfair competition  
5 claims. Defendant LIEW YEW SOON ("Liew")'s stipulation reflects his signed admission to  
6 specific facts. Furthermore, the evidence sought to be excluded are probative on the issue of  
7 whether Defendants' failure to use a disclaimer in their emails after this Court's Order of  
8 **October 30, 2018** supports a finding of willful infringement.

## II. PROCEDURAL AND FACTUAL BACKGROUND

10

10 Plaintiff SinCo Technologies Pte. Ltd., (“SINCO”) filed its Complaint [ECF 1] in this  
11 action on **September 22, 2017**, asserting causes of action for, *inter alia*, trademark infringement  
12 and for unfair competition in the form of passing off. (Declaration of Daniel E. Gaitan (“*Gaitan*  
13 *Decl.*”), at ¶ 2.) Plaintiff’s Second Amended Complaint [“SAC”] [ECF 23] was filed on  
14 **February 23, 2018**. (*Gaitan Decl.* at ¶3.)

15

15        The SAC sets forth a chronology of the events upon which Plaintiff's allegations against  
16      Defendants SinCo Electronics (Dongguan) Co., Ltd., XingKe Electronics (Dongguan) Co., Ltd.,  
17      Sincoo Electronics Technology Co., Ltd., Mui Liang Tjoa; Ng Cher Yong Aka Cy Ng, and Liew  
18      Yew Soon Aka Mark Liew (collectively, "XINGKE"), are based, including XINGKE's  
19      "deliberate and intentional actions in misrepresenting themselves as SinCo through their admitted  
20      infringement of SinCo's registered trademarks by the use of the Marks in the United States . . . in  
21      person in California and throughout the United States . . . in an effort to steal SinCo's goodwill  
22      and status as a qualified electronics supplier . . ." (SAC, ECF 23, at ¶1.) SINCO's SAC  
23      expressly cites to that State Court Action for the proposition that despite the pending state  
24      litigation between the parties in the Superior Court of California, several of the Defendants  
25      continue to willfully engage in acts detrimental to Plaintiff in disregard of the applicable laws  
26      prohibiting such conduct. (Second Amended Complaint, ECF 23, at ¶6, [“Defendants Mr. Liew  
27      and Mr. Ng were SinCo’s employees and continued to act against SinCo’s interest even after the  
28      state action was filed against them personally . . .”]) The SAC further alleges Defendant Mr.

1 Liew intentionally violated not only his employment agreement, but the **June 2, 2017** preliminary  
 2 injunction. (SAC, ECF 23, at ¶8.)

3                   **A.        Defendant Mark Liew- Admitted Passing Off**

4                   Mark Liew informed SinCo on **June 26, 2016** by email and a telephone call to Cynthia  
 5 Chua of SINCO that he was planning a personal trip to Disneyland. *Gaitan Decl.* at Ex. 21.  
 6 However, in his **June 24, 2016**, VISA application to the U.S. Department of State he indicated he  
 7 was traveling to the U.S. to meet a customer Apple Inc., for his employer SINCO. *Id.* Ex. B. Mr.  
 8 Liew had admittedly never been to the U.S. in the years that he worked for SINCO. Mr. Liew  
 9 intentionally secreted his intentions from SINCO after already filing a VISA indicating his true  
 10 intentions. Thereafter, Mr. Liew was personally served in the State action at the house XINGKE  
 11 recently purchased in San Jose, after SINCO learned of his unauthorized customer visits with  
 12 XINGKE personnel. *Id.* Ex. C. On **June 2, 2017**, the State Court issue a Preliminary Injunction  
 13 to Mr. Liew which prohibited him from passing himself off as a current employee of SinCo  
 14 Technologies PTE Ltd, which is relevant to SINCO's unfair competition claim in this matter. *Id.*  
 15 Ex.D. On **January 2, 2019**, the State Court entered an Order of Contempt, based on the  
 16 Stipulation of Mark Liew signed on **December 28, 2019**. *Id.* ¶7 and Ex. E. The Superior Court's  
 17 **January 2, 2019** order reflects that during a hearing on **December 14, 2019**, the Superior Court  
 18 found "substantial evidence regarding the alleged contempt" but noted that a live hearing would  
 19 need to be held before sanctions could be issued. *Id.* Instead of proceeding with a hearing,  
 20 Defendant Liew stipulated to the entry of an order finding him in violation of the **June 2, 2017**  
 21 preliminary injunction. *Id.* In that Stipulation Mr. Liew admitted that between **June 2, 2017** to  
 22 **August 2, 2017**, he had sent nine emails to Google from a @sincocn.com email address, three  
 23 months after it had changed its name to XINGKE, and Mr. Liew had access to the email address  
 24 @xingkecn.com. *Id.* Ex. F. The Superior Court's **January 2, 2019** order reflects that during a  
 25 hearing on **December 14, 2019**, the Superior Court found "substantial evidence regarding the  
 26 alleged contempt" but noted that a live hearing would need to be held before sanctions could be  
 27 issued. *Id.* at Ex. E.

28

1            **B. Defendants Fail to Use Court Ordered Disclaimer**

2            On **March 15, 2017**, SinCo Electronics (Dongguan) Co., Ltd., (“XINGKE”) informed its  
 3 customers it was changing its name to “XingKe.” *Id.* Ex. G. On **October 30, 2018**, this Court  
 4 Ordered Defendants, in addition to those acting in concert with them to include a disclaimer. *Id.*  
 5 ¶6 and Ex. H. Defendants have produced emails and deposition testimony to show they did not  
 6 consistently use the disclaimer required on **Tjoa- November 8, 2017** and **Liew- December 13, 2017**,  
 7 which goes directly to willfulness. *Id.* Ex. I

8            Defendants admit that, “The June 2017 preliminary injunction against Liew in the State  
 9 Action, in part, prohibited Liew from contacting SinCo SG customers and portraying himself as a  
 10 SinCo SG employee.” 2:14-15. The unfair competition claim asserted by SINCO relates to this  
 11 issue, and there is no longer an unfair competition claim in the state action, based on this case.  
 12 Defendants’ assert, “Google knew that the difference between the companies long before these  
 13 emails were sent in 2017,” why did Mr. Liew violate the preliminary injunction? 3:8-9.  
 14 Defendants’ assumption that Andy Lim accounts for all employees in Google is not supported by  
 15 the facts. Defendants’ assert that Andy Lim had no confusion “as early as August 2016,” but  
 16 Andy Lim stated on August 20, 2016 that there was confusion amongst the PD. Ex. 118. What  
 17 Andy Lim knows is not the same as Google as an organization, as he himself evidenced.

18            **III. LEGAL STANDARD**

19            “A motion in limine is a procedural mechanism to limit in advance testimony or evidence  
 20 in a particular area.” *Hana Fin., Inc. v. Hana Bank*, 735 F.3d 1158, 1162 (9th Cir. 2013), aff’d,  
 21 574 U.S. 418, 135 (2015). In the case of a jury trial, a court’s ruling “at the outset” gives counsel  
 22 advance notice of the scope of certain evidence so that admissibility is settled before attempted  
 23 use of the evidence before the jury. *United States v. Heller*, 551 F.3d 1108, 1111–12 (9th Cir.  
 24 2009) All decisions on motions in limine are subject to reevaluation at trial. *See* Fed. R. Evid. 103  
 25 advisory committee’s note to 2000 amendment (“Even where the court’s ruling is definitive,  
 26 nothing . . . prohibits the court from revisiting its decision when the evidence is to be offered.”);  
 27 *Luce v. United States*, 469 U.S. 38, 41–42 (1984) (“[E]ven if nothing unexpected happens at trial,  
 28 the judge is free, in the exercise of sound judicial discretion, to alter a previous in limine ruling.”).

1 **IV. ARGUMENT**2 **A. The Preliminary Injunction Orders and Order Re: Contempt Are Directly**  
3 **Relevant to Plaintiff's Claims in this Action**

4 All relevant evidence is admissible. Fed. R. Evid. 402. Evidence is relevant if it has “any  
5 tendency to make a fact [that is of consequence in determining the action] more or less probable  
6 than it would be without the evidence.” Fed. R. Evid. 401. Even if relevant, evidence may be  
7 excluded “if its probative value is substantially outweighed by a danger of ... unfair prejudice,  
8 confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting  
9 cumulative evidence.” Fed. R. Evid. 403. “A district court is accorded a wide discretion in  
10 determining the admissibility of evidence under the Federal Rules.” *United States v. Abel*, 469  
11 U.S. 45, 54 (1984). Nevertheless, “[i]n making a determination under Rule 403, the balance in  
12 close cases is in favor of admission” of the evidence. *United States v. Crosby*, 75 F.3d 1343, 1347  
13 (9th Cir. 1996) (quoting *United States v. Payne*, 805 F.2d 1062, 1066 (D.C. Cir. 1986)).

14 In the present case, SINCO alleges Defendants knowingly and willfully used its  
15 trademarks in direct competition with its own business. (See e.g. SAC, ECF 23, at ¶¶ 2, 5, 7, 11,  
16 95, 186, 187, 197, 221.) Defendants’ knowledge that they were engaged in unlawful conduct  
17 which would result in harm to Plaintiff is an essential element of several of the causes of action  
18 asserted in the SAC, and Plaintiff’s right to certain relief. For example, under 15 U.S.C. § 1117  
19 (a) Defendants’ failure to comply with the preliminary injunctions at issue reflects their willful  
20 violation of SINCO’s rights which enables SINCO to pursue such additional remedies as recovery  
21 of their lost profits, damages, costs, and attorneys’ fees. Further, SINCO’s ‘Safe Distance’ theory  
22 is predicated on known infringers, applying to Defendants’ Cy Ng and Liew, as illustrated  
23 through the orders at issue. This rule was created to prevent known infringers from using  
24 trademarks whose use by non-infringers would not necessarily be actionable. See *Broderick &*  
25 *Bascom Rope Co. v. Manoff*, 41 F.2d 353 (6th Cir. 1930). This is why the absence of the Court  
26 ordered disclaimer is critical to SINCO’s claims.

27 Exclusion of Mr. Liew’s actions would severely handicap SINCO’s ability to provide  
28 evidence as to Defendants’ intent, use, and likelihood of confusion. Mr. Liew’s violation of the

1 contempt order powerfully illustrates multiple elements of the likelihood of confusion analysis,  
 2 including the “intent” ‘similarity of marks’ and ‘actual confusion’. *AMF Inc. v. Sleekcraft Boats*,  
 3 599 F.2d 341 (9th Cir. 1979), abrogated on other grounds by *Mattel, Inc. v. Walking Mountain*  
 4 *Prods.*, 353 F.3d 792 (9th Cir. 2003). Mr. Liew’s use of SINCO’s mark—while having express  
 5 knowledge of the prohibited act’s, and an alternate email address, demonstrates Defendants’  
 6 intent to trade on SINCO’s good will and reputation.

7 Most importantly, these actions go directly to Defendants ‘intent’, another factor in  
 8 likelihood of confusion analysis. The Ninth Circuit has found that “[w]hen the alleged infringer  
 9 knowingly adopts a mark similar to another’s, reviewing courts presume that the Defendant can  
 10 accomplish his purpose: that is, that the public will be deceived.” *Id.* This evidence is even more  
 11 compelling being that there was a preliminary injunction put him on notice.

12 In addition to being relevant to the analysis of the *Sleekcraft* factors, Courts have found that  
 13 it is the jury’s role to determine whether infringement was intentional or willful. In *Globefill*  
 14 *Incorporated* the jury found Defendants’ infringement to be intentional or willful. *Globefill*  
 15 *Incorporated v. Elements Spirits, Inc.* (C.D. Cal., Sept. 8, 2017, No. 210CV02034CBMPLAX)  
 16 2017 WL 6520589, at \*3, aff’d (9th Cir. 2019) 756 Fed.Appx. 764. The jury’s finding led the court  
 17 to determine whether the case was “exceptional” within the meaning of the Lanham Act. *Id.* Under  
 18 the Lanham Act, “[t]he courts in exceptional cases may award reasonable attorney fees to the  
 19 prevailing party.” 15 U.S.C. § 1117. An “exceptional” case “is simply one that stands out from  
 20 others with respect to the substantive strength of a party’s litigating position (considering both the  
 21 governing law and the facts of the case) or the unreasonable manner in which the case was  
 22 litigated.” *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 134 S. Ct. 1749, 1756 (2014). This  
 23 evidence goes directly to his willful and intentional acts despite their being an injunction in place,  
 24 showing his utter disregard for the authority of the United States justice system.

25 The preliminary injunction and stipulation sought to be excluded are probative on the  
 26 question of whether Defendants knew their conduct was wrongful yet continued unabated. The  
 27 preliminary injunctions, at a minimum, prevent Defendants’ from claiming they acted innocently  
 28 and without intent.

**B. Defendants Will Suffer No Prejudice if the Preliminary Injunction Orders and Order Re: Contempt Are Admitted into Evidence**

The probative value of the preliminary injunction orders and order re: contempt plainly outweighs the potential for undue prejudice to result under a balancing test conducted pursuant to Fed. R. Evid. 403. In this instance, the orders would not be admitted to demonstrate the underlying facts occurred, but that Defendants *knew* such conduct was wrongful and persisted despite that knowledge. The relevance is not the legal import of the Orders, but that Defendants willfully ignored the Court Orders. Any potential for prejudice can be mitigated by properly instructing the jury as what those orders are, and the scope of matters for which the orders may be considered.

For example, should Defendants testify at trial that they had no idea that holding themselves out as SINCO and contacting SINCO's customers was wrongful, the preliminary injunction orders and order re: contempt serve as evidence to reflect that Defendants were in fact aware of the harm which would result to Plaintiff when they committed the acts alleged, yet persisted in spite of their being enjoined from continuing with those acts.

**C. Federal Rule of Evidence 408 is Not Applicable**

Defendants' assertion that the contempt order should be excluded because it represents a compromise under Fed. R. Evid. 408 is incorrect and represents a misapplication of that rule of evidence. Fed. R. Evid. 408 pertains to compromises *of a disputed claim*, not a situation where a party accepts liability for their conduct and takes mitigating actions to avoid a greater sanction, such as jail time in this instance. The stipulation entered into by Mr. Liew did not represent an offer to compromise any of Plaintiff's claims against him. Instead, it amounted to a procedural maneuver to avoid further proceedings on a collateral issue, namely Mr. Liew's violation of a court order. Again, this did not contain evidence "furnishing or offering or promising to furnish ... valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount," *Wall Data Inc. v. Los Angeles County Sheriff's Dept.* 447 F.3d 769, 784 (9th Cir. 2006).

1        Defendants attempt to paint false premise that SINCO was rewarded with less attorney  
 2 fees, it would have occurred, by Mr. Liew admitting to his behavior. In reality, there was no  
 3 compromise here. Mr. Liew knew he was going to be found in violation of the preliminary  
 4 injunction. Again, Mr. Liew violated a preliminary injunction and harmed SINCO by passing  
 5 himself off as them at a time when the name apparently had no value to his employer. There was  
 6 no agreement that this stipulation would remain confidential or that his admission of guilt would  
 7 not be inadmissible. “A stipulation is treated as a conclusive admission by the parties to the  
 8 stipulation unless otherwise permitted by the court or agreed upon by those parties.” *Olsen v.*  
 9 *Comm'r*, 2 F. App'x 795, 796 (9th Cir. 2001). This was not a settlement agreement. That notion is  
 10 just ridiculous. This case relates to trademark infringement, which is the conduct Mr. Liew was  
 11 furthering with his willful and intentional conduct. Moreover, this was a public court order.

12        **D.     The Court Should Reserve the Option to Consider the Orders at Issue Even if**  
 13 **the Instant MIL is Granted**

14        Under its inherent powers, a court may impose sanctions where a party has willfully  
 15 disobeyed a court order, or where the party has “acted in bad faith, vexatorily, or for oppressive  
 16 reasons.” *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 134 S. Ct. 1749, 1757 (2014). The  
 17 bad-faith requirement sets a “high threshold,” *Primus Auto. Fin. Servs., Inc. v. Batarse*, 115 F.3d  
 18 644, 648 (9th Cir. 1997), which may be met by willful misconduct, or recklessness that is coupled  
 19 with an improper purpose. *Fink v. Gomez*, 239 F.3d 989, 993-94 (9th Cir. 2001).

20        **V.     CONCLUSION**

21        For the foregoing reasons, Defendants’ Motion in Limine to Exclude Evidence of the  
 22 State Court Preliminary Injunction, Liew’s Stipulation of the Related Contempt Order, and  
 23 Liew’s Violation of the State Court Preliminary Injunction should be denied. Assuming *arguendo*  
 24 the Court decides to grant the instant motion in limine, it should nevertheless retain the option to  
 25 review the orders at issue *in camera* and consider the evidence outside of the presence of the jury.

26        Dated: September 13, 2021

ROPERS MAJESKI PC

27        By: /s/ Daniel E. Gaitan

28                    LAEL D. ANDARA

                  DANIEL E. GAITAN

                  Attorneys for Plaintiff

                  SINCO TECHNOLOGIES PTE LTD